

## **EXHIBIT 12**

### **WORKFORCE INVESTMENT NOTICE: 02-11**

**SUBJECT:** Technical Assistance Guidance on Complaint and Grievance Procedures

**DATE:** June 30, 2003

#### **PURPOSE**

To transmit Technical Assistance Guidance covering Complaint and Grievance Procedures.

#### **BACKGROUND**

20 CFR 667.600 requires that, with the exception of Job Corps, each local area, State and direct recipient of funds under Title I of WIA must establish and maintain a procedure for grievances and complaints. Local area procedures must provide:

- (1) A process for dealing with grievances and complaints from participants and other interested parties affected by the local Workforce Investment System, including one-stop partners and service providers;
- (2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of a grievance or complaint;
- (3) A process which allows an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides; and
- (4) Must make reasonable efforts to assure that the information will be understood by affected participants and other individuals, including youth and those who are limited-English speaking individuals.

Such efforts must comply with the language requirements of 29 CFR Part 37.35 regarding the provision of services and information in languages other than English. (See WIN 02-10 dated June 26, 2003, and entitled, "Policy Guidance for Ensuring Access to Services for Persons with Limited English Proficiency.") Local area and/or direct recipients of Title I WIA funds grievance procedures must include:

- An opportunity for a local level appeal to a State entity when:
- (i) No decision is reached within 60 days; or

- (ii) Either party is dissatisfied with the local hearing decision.

## **DISCUSSION**

To assist local areas in the formulation of their policy relating to grievances and complaints, the State Workforce Investment Office recommends that local areas formulate procedures that are in keeping with the following.

### **Non Criminal Complaints**

Non criminal complaints should be filed within one year of date of occurrence. Each local area shall establish procedures for resolving non-criminal WIA complaints and grievances arising in connection with WIA activities and services, as well as complaints arising from actions taken by the local area, it's One-Stop operator, One-Stop partners and/or service providers on investigations, audits, procurement, or monitoring reports.

An opportunity for informal resolution and impartial hearings must be conducted within 60 days of the receipt of the complaint if resolution cannot be reached during the initial investigation or review. Hearing procedures should include written notice to all parties involved of the date, time, and place of hearing; the opportunity to present evidence; the right to be represented by an attorney (or person of their choice); and the right to a written decision and a notice of appeal. Local area procedures shall provide for a written decision within 60 days of the filing of a complaint. A licensed attorney, authorized to take sworn statements, should be utilized to conduct impartial hearings.

If the local area renders no decision within 60 days or if either party is dissatisfied with the decision, either party can request review by the Department of labor and Training (DLT), if filed at DLT in writing by the dissatisfied party within five days of receipt of the decision or 15 days from the date the complainant should have received a decision. The DLT will issue its final decision within 30 days of receipt. For complaints initially filed at DLT, an independent review will be provided if no decision is issued within 60 days or if either party is dissatisfied with the decision. The independent reviewer has 30 days to make a decision in these instances.

Employers must have a grievance procedure relating to the terms and conditions of employment for participants funded under the Act. Employers may operate their own procedure or may utilize the local area's. Employers shall inform participants which procedure to follow when the participant begins employment. Participants may request a local area review of an employer's decision with appeal rights to DLT should the local area render a disputed decision.

WIA funded staff must also have a complaint and grievance system available to them regarding the terms and conditions of their employment. However, in this regard local decisions are considered final.

### **Criminal Complaints**

Complaints alleging criminal fraud, waste, abuse or other criminal activities must be filed directly and immediately with the Office of Inspector General - Investigations, 200 Constitution Ave. NW. Washington D.C. 20510. The Employment and Training Administration must be copied on all complaints that are filed alleging fraud, waste, abuse or other criminal activities. The Hotline number is 1-800-347-3756. The DLT Equal Opportunity Officer can assist in reporting to the Office of Inspector General.

### **Discrimination Complaints**

Any complaint alleging discrimination based on the grounds of race, color, religion, sex, age, national origin, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in WIA may be filed directly to the Director, Civil Rights Center (CRC), Room N-4123, 200 Constitution Avenue NW, Washington, D.C. 20210. The DLT Equal Opportunity Officer can assist complainants in filing with the Directorate of Civil Rights.

Local areas and all subrecipients shall post in administrative offices and public access areas notice about any prohibited discriminatory practice to: applicants, participants, applicants for employment, employees and members of the public including those with impaired vision and hearing, and unions or professional organizations holding collective bargaining or professional agreements with the local area. At a minimum the notice listed below, "Equal Opportunity is the Law," shall be prominently posted in reasonable numbers and places, disseminated in internal memoranda and other written communications including handbooks or manuals, and made available to each participant and documentation of notification maintained in the participant file. Appropriate formats for individuals with visual impairments will be provided and records that such notice has been given shall be made a part of the participant's file.

### **“EQUAL OPPORTUNITY IS THE LAW “**

“This recipient is prohibited from discriminating on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in programs funded under the Workforce Investment Act, in admission or access to, opportunity or treatment in, or employment in the administration of, or in connection with, any WIA-funded program or activity. Persons, who think that they have been subjected to discrimination under a WIA-funded program or activity, may file a complaint with the Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, D.C. 20210.”

Those who elect to file their complaint with DLT, must wait until DLT issues a decision or until 60 days have passed, whichever is sooner, before filing with DCR (see address above). If DLT has not provided a written decision within 60 days of the filing of the complaint, the complainant need not wait for a decision to be issued, but may file a complaint with DCR within 30 days of the expiration of the 60-day period. Those who are dissatisfied with DLT's resolution of their

complaint may file a complaint with DCR. Such complaints must be filed within 30 days of the date you received notice of DLT's proposed resolution.

During each presentation to orient new participants and/or new employees to its WIA funded program or activity, all local areas and their subrecipients must include a discussion of participants' and/or employees' rights to file a complaint with DLT or DCR. Communications with individuals with disabilities must be as effective as communications with others.

### **Labor Standard Complaints**

Complainants may: a) exhaust the non-criminal administrative process by submitting the complaint directly to DLT for review and disposition within 60 days; or b) submit the grievance to a binding grievance procedure if a collective bargaining agreement covering the parties so provides. If 60 days expires with no decision (or an adverse decision) is rendered, the complaint may be submitted to the Department of Labor which may change, reverse, or issue a final decision.

### **Non-WIA Remedies**

Complaints may be filed against a state, local area or other subrecipients for violations of WIA and a federal, state, or local law with respect to a non-WIA cause of action. The complainant may institute a civil action or pursue other remedies authorized under federal, state, or local law without exhausting these administrative grievance procedures.

### **Equal Opportunity Officers Required**

Each local area and their subrecipients shall designate an EO officer to coordinate equal opportunities responsibilities. The local area shall make public the name, title of position, address, and telephone number of the Equal Opportunity Officer or for small recipients, and individual responsible for adoption and publication of complaint procedures and the processing of complaints and record maintenance.

### **Complaint Tracking and Record Retention**

Each local area should maintain a log of all written complaints filed with it. The log should include: the name and address of the complainant, ground of complaint, description, disposition and date of disposition, and other pertinent information. Records of complaints and actions taken there under shall be maintained for three years from the date of resolution of the complaint.

### **U.S. Department of Labor**

The Department of Labor may investigate any action or complaint, when it deems appropriate, and issue final determinations that are binding on all parties involved.

## **ACTION**

Local Areas should have Complaint and Grievance Procedures in place by August 15, 2003. Request for Technical Assistance may be directed to Camille Vollaro, the EO Officer for DLT at 462-8815.